improvement unless an operation be performed; and the result of such an operation is doubtful.

She brought an action against the Hospital which was tried before Mr. Justice Britton at Brockville, May 26, 1915; the learned Judge decided in favour of the defendants (34 O. L. R. 206), and the plaintiff now appeals.

There can in my mind be no possible doubt that the burn was caused by an overheated brick being placed against the foot of the anæsthetized and unconscious plaintiff; that this was done by the nurse in charge; and that such an act was improper. There can be no doubt of the liability of the nurse civilly in tort, unless she can justify herself by a command of some one she was bound to obey; but the nurse is not sued here. The sole question is whether the Hospital is liable for this act of its nurse.

The Matron was the head of the nursing staff; a trained nurse herself, she was the superintendent of the nurses; she selected the nurses, hired and discharged them, subject to the approval of the Board.

The nurses, in addition to board etc., received a "honorarium" in money ("honorarium" which really means a gift on assuming an office, is now often used as equivalent to "salary" by those who do not like to think they receive wages). The particular nurse to wait on her, the plaintiff had nothing to do with selecting. The Matron appointed her to that particular work, and she never became the servant or employee of the plaintiff, but continued the servant and employee of the Hospital, and was sent by the Hospital to perform for the Hospital its contract to supply the plaintiff with nursing.

In the absence of authority and of special circumstances, it would be plain that the Hospital is liable for her act. The cases will be examined after dealing with the circumstance most relied upon by the defendants.

It is contended that the nurse was under the orders of the operating surgeon; that she carried out his orders, and consequently the Hospital could not be made liable. But this connotes a state of affairs which does not exist in the present case.

If the nurse obeyed the express order of the surgeon, she was not guilty of negligence at all—that is the duty of a nurse. Of course she must take some pains to see that she quite understands the doctor's meaning and must not act on what she should know to be a slip of the tongue. To put it in other words, the order she obeys must be a real order, not such as is an apparent order but so expressed that it cannot be supposed to set out the doctor's real meaning.

A nurse holds herself out to the world as being possessed of competent skill and undertakes to use reasonable care. If the command of the surgeon is plainly a slip, she should call his attention pointedly to the order. When his attention has been called to the order and he shows that the order made was that intended, she may obey; "he is the doctor," and it is not negligence for a nurse to act on the belief that he is the more competent.

In Armstrong v. Bruce (1904), 4 O.W. R. 327, the nurse contended that the surgeon had ordered her to fill the "Kelly pad," upon which the unconscious patient was to lie, with boiling water. She did fill it with boiling instead of hot water, with the result which was to be expected. The patient sued the surgeon for damages; the defendant and other surgeons swore that the nurse had been told to fill the pad with hot water (not boiling) and the trial Judge believed them. My learned brother said, p. 329: "I have no manner of doubt that if the doctor had said to any experienced nurse that she was to